IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 14TH JUNE 2007 / 24TH JYAISHTA 1929

OP.No. 1326 of 2000(G)

PETITIONERS:

1. **K. AYYAPPAN NAIR, S/O.KRISHNAN NAIR, PARAKKOTTU VEEDU, MAVORTHALAKONAM, SREEKARYAM, THIRUVANANTHAPURAM.**

2. **S.AJITH KUMAR, ERAYANKODUMEKKUMKARA PUTHEN VEEDU, VITHURA, THIRUVANANTHAPURAM.**

BY ADV. DR.K.P.KYLASANATHA PILLAI
SRI.P.SREEKUMAR
SRI.B.PRABHAT KUMAR
SMT.SREEDEVI KYLASANATH

RESPONDENTS:

1. **UNIVERSITY OF KERALA, REP. BY ITS REGISTRAR, UNIVERSITY BUILDINGS, THIRUVANANTHAPURAM.**

2. **VICE CHANCELLOR, KERALA UNIVERSITY, THIRUVANANTHAPURAM.**

3. **R.SUNDARESAN, LIGHT DUTY DRIVER, UNIVERSITY OF KERALA, THIRUVANANTHAPURAM.**

4. **J.S.DICKSAN, LIGHT DUTY DRIVER, NOW ON DEPUTATION TO DIRECTORATE OF HIGHER SECONDARY EDUCATION, THIRUVANANTHAPURAM.**

BY ADV. SRI.M.K.CHANDRAMOHAN DAS,SC,KERALA UTY.
SRI.S.GOPAKUMARAN NAIR (Sr.) for R1 & R2
SRI.RAJESH THOMAS for R3 & R4
SRI.J.JULIAN XAVIER
SRI.FIROZ K.ROBIN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 14/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.2079/2000 IN O.P.NO.1326/2000 G

DISMISSED

14/06/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1; **COPY OF THE ORDER NO.AD.AV.1.1456/94 DTD. 30/01/1995 ISSUED BY THE 1ST RESPONDENT.**

EXT.P2: **COPY OF THE LICENCES ISSUED BY THE MOTOR VEHICLES DEPARTMENT OF THE INDIA GOVERNMENT TO THE PETITIONERS.**

EXT.P3: **COPY OF THE CERTIFICATE ISSUED TO THE 1ST PETITIONER SHOWING HE WAS ENTRUSTED TO DRIVE HEAVY VEHICLES.**

EXT.P4; **COPY OF THE CIRCULAR NO.AD.AV.4617/99 DTD. 16/03/1999 OF THE 1ST RESPONDENT.**

EXT.P5: **COPY OF THE MEMO ISSUED TO THE 1ST PETITIONER CALLING FOR PRACTICAL TEST.**

EXT.P6: **COPY OF THE PETITIONS SUBMITTED BY THE PETITIONERS BEFORE THE 1ST RESPONDENT.**

EXT.P7: **COPY OF THE ORDER NO.AD.AV.1.1202/82 DTD. 5/08/1985 OF THE 1ST RESPONDENT.**

/TRUE COPY/

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THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No.1326 of 2000-G

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Dated this the 14th day of June, 2007.

JUDGMENT

The petitioners were appointed as Light Duty Vehicle Drivers, following sanction granted by the Vice Chancellor of the Kerala University, as evidenced by Ext.P1. It is not in dispute that the petitioners possessed the requisite qualification and licence to drive heavy duty vehicles. By Ext.P4, the Deputy Registrar of the University on behalf of the Registrar, issued a circular for preparation of a select list of persons for appointment as Bus Driver. By that circular, the Light Duty Vehicle Drivers in the University, who possess the licence for driving Heavy Duty Vehicles and who are experienced in driving such vehicles, were eligible to apply for the post. Following Ext.P5 and similar memos, the petitioners and others were subjected to a practical test to assess driving skill. The contention of the petitioners is that seniority has been overlooked in the matter of selecting the Heavy Duty Vehicle

Drivers and that the selection procedure has been deflected to give undue and unauthorised advantage in favour of certain persons.

2. The stand of the University is that the selection was for the purpose of having a person to drive the University bus used for conveyance of its employees and students and therefore, it is the primary duty of the University to assess the driving ability of the candidates for selection as Bus Driver. According to the University, seniority would be considered only, if the applicants qualify in the practical test and get selected as Bus Drivers, for the purpose of inter-se seniority among the candidates. It is pleaded by the University that there had been instances where none of the candidates, who participated in the practical test, qualified and re-test was conducted, after a lapse of time to enable the applicants to prove their driving skills. The University further states that while it may be true that University's Engineer had utilised the services of the first petitioner to ply the University bus during some emergent situation, this was done at the sole responsibility of the Engineer as an emergent measure in his capacity as the Controlling

Officer and the same gives not much for the first petitioner to claim any priority.

3. Admittedly, the petitioners applied for being considered in terms of the circular. The plea of the University that the post of Driver in the Transport Wing (Bus Driver) is not a post for automatic promotion of Light Duty Vehicle Drivers, is not disputed. Reference is made to the Kerala University First Ordinances, 1978 to point out that the selection is made as per the procedure and practice prevalent in the Government. The practical test is held to assess the driving skills and the expert bench mark is the minimum qualification at 60% and that the petitioners did not acquire it.

4. The learned counsel for the petitioners urged that notwithstanding the reference made by the University to the University Laws, it is not pointed out that any test is prescribed for the selection. It is contended that the reference made to the Statutes would show that the appointment can be made either by direct recruitment or from qualified University employees. In my view, this does not disable the University from conducting a

test from among the qualified University employees to be appointed as a Heavy Duty Vehicle Driver, having regard to the duties and responsibilities that are attached to such a post.

In the aforesaid circumstances, having regard to the fact that the selection was to the post of a Heavy Duty Vehicle Driver, who would be bestowed with duties and responsibilities of driving the University bus to convey University teachers and other University servants, as also students, I do not find any legal infirmity or jurisdictional error in the impugned selection. The writ petition fails. The same is accordingly dismissed. No costs.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

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O.P.No. 1326 of 2000-G

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JUDGMENT

Dated: 14th June, 2007.